STATE OF MICHIGAN

COURT OF APPEALS

RICHARD NELSON and VICTORIA NELSON, Plaintiffs-Appellants, v ERIK DAVENPORT, LORI DAVENPORT, RICHARD L. MOSHIER, LINDA KAY MOSHIER, TIMOTHY C. GIGNAC, PAT GIGNAC, CHARLES LEWIS, and RHEA LEWIS, Defendants-Appellees.	UNPUBLISHED October 24, 2006 No. 261683 Crawford Circuit Court LC No. 03-006125-CH

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right a circuit court order granting defendants' motion for involuntary dismissal at the close of plaintiffs' proofs in a bench trial. At issue is the propriety of defendants' maintenance of docks, mooring objects and structures, boat hoists, and wet anchors in and on Lake Margrethe, which is located in Crawford County, and defendants' sunbathing, lounging, and picnicking activities in the area. Resolution of this appeal focuses on the interpretation of deed language conveying interests in riparian property that abuts the lake. We affirm.

Plaintiffs each own riparian property located on Lake Margrethe, including 1/6 interests in a private road (Nelson Road) that terminates at the lake. Defendants are the owners of the four remaining 1/6 interests in Nelson Road. The parties' various interests in Nelson Road were created in six quitclaim deeds containing the following language of conveyance:

> Hereby conveyed is a 1/6th undivided interest in the following described parcel of land for purposes of ingress and egress to Lake Margrethe. Commencing at the NW corner of Gov't lot 3 of Section 10, Town 26 North Range 4 West; thence south 29°09´E 201 feet for the point of beginning; thence East to the W'ly right-of-way of Danish Landing Road, thence Southwesterly along same 20 feet; thence West to the shore of Lake Margrethe; thence Northerly along the same 20 feet to the point of beginning.

Plaintiffs argue that the circuit court erred in concluding that the language "for purposes of ingress and egress" did not limit defendants' use of Nelson Road to that purpose. We disagree. A motion for involuntary dismissal is properly granted in a bench trial when "on the facts and the law the plaintiff has shown no right to relief." MCR 2.504(B)(2). Such a motion "calls upon the trial judge to exercise his function as trier of fact, weigh the evidence, pass upon the credibility of witnesses and select between conflicting inferences." *Marderosian v The Stroh Brewery Co*, 123 Mich App 719, 724; 333 NW2d 341 (1983). The evidence is not viewed in the light most favorable to the plaintiff. *Id*. Review of an involuntary dismissal decision and questions of law is de novo. *Sands Appliance Services v Wilson*, 231 Mich App 405, 409; 587 NW2d 814 (1998), rev'd on other grounds 463 Mich 231; 615 NW2d 241 (2000). The trial court's factual findings, however, are reviewed under the clearly erroneous standard. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000).

Riparian land is "a parcel of land which includes therein a part of or is bounded by a natural water course." *Thompson v Enz*, 379 Mich 667, 677; 154 NW2d 473 (1967). It is well established "'that riparian rights are property.'" *Peterman v Dep't of Natural Resources*, 446 Mich 177, 191; 521 NW2d 499 (1994) (citation omitted). Riparian rights generally include the right of access to the water, reasonable use of the water for general purposes such as boating, the right to accretions, and "the right to build a pier out to the line of navigability." *Tennant v Recreation Dev Corp*, 72 Mich App 183, 186; 249 NW2d 348 (1976), citing *Hilt v Weber*, 252 Mich 198, 225; 233 NW 159 (1930). Riparian rights are conferred on a property owner whose parcel abuts a water course, even where that parcel simply provides water access for non-riparian properties. See *Three Lakes Ass'n v Kessler*, 91 Mich App 371, 375; 285 NW2d 300 (1979).

Here, the parties agree that a fee, as opposed to an easement, was conveyed by way of the quitclaim deeds. Plaintiffs, however, argue that the "ingress and egress" clause operates as a restrictive covenant and limits the use of Nelson Road to simply accessing the lake and no more. Plaintiffs further argue that the clause unambiguously established a restrictive covenant, thereby reflecting the grantor's intent, without the need to examine extrinsic evidence to determine whether there was an intent to create a restrictive covenant. Plaintiffs contend that the circuit court erred in considering extrinsic evidence in making its ruling and, if this was not error, the court erred in considering extrinsic evidence of events and matters occurring long after the conveyances were made instead of focusing on the circumstances existing at the time of the conveyances. Defendants argue that the circuit court correctly found an ambiguity in the language at issue and correctly considered extrinsic evidence in reaching its decision. We agree with plaintiffs that the deed language is unambiguous, but, contrary to plaintiffs' position, the language clearly does not establish a restrictive covenant. The plain language of the quitclaim deeds provides that fees, unencumbered by any restrictions, were conveyed, and the "ingress and egress" clause simply provides the reason or purpose for making the conveyances without restricting the grantees' use following the transactions.

"Where the property is taken by purchase, the character of the estate is determined by the terms of [the] grant . . . ." *Quinn v Pere Marquette R Co*, 256 Mich 143, 150; 239 NW 376 (1931). Our Supreme Court has recognized that the following principles control the interpretation and construction of deed language:

> "(1) In construing a deed of conveyance[,] the first and fundamental inquiry must be the intent of the parties as expressed in the language thereof; (2)

> in arriving at the intent of parties as expressed in the instrument, consideration must be given to the whole [of the deed] and to each and every part of it; (3) no language in the instrument may be needlessly rejected as meaningless, but, if possible, all the language of a deed must be harmonized and construed so as to make all of it meaningful; (4) the only purpose of rules of construction of conveyances is to enable the court to reach the probable intent of the parties when it is not otherwise ascertainable." [*Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 699 NW2d 272 (2005) (citation omitted; alterations in original).]

The plain language of the deed controls as it evinces the parties' intent. *Id.*

"A covenant is a contract created with the intention of enhancing the value of property and is a valuable property right." *The Mable Cleary Trust v The Edward-Marlah Muzyl Trust*, 262 Mich App 485, 491; 686 NW2d 770 (2004). "Strong . . . public policy" supports property owners' rights "to create and enforce covenants affecting their own property." *Terrien v Zwit*, 467 Mich 56, 70-71; 648 NW2d 602 (2002). A restrictive covenant may be embodied in a deed. See *O'Connor v Resort Custom Builders, Inc*, 459 Mich 335, 341-342; 591 NW2d 216 (1999). Such covenants "are to be read as a whole to give effect to the ascertainable intent of the drafter." *Mable Cleary Trust, supra* at 505. They "'are construed strictly against grantors and those claiming the right to enforce them, and all doubts are resolved in favor of the free use of property.'" *O'Connor, supra* at 341 (citation omitted). Restrictive covenants may operate to limit riparian rights otherwise enjoyed by operation of law. See *Ottawa Shores Home Owners Ass'n, Inc v Lechlak*, 344 Mich 366, 372-374; 73 NW2d 840 (1955); *Blain v Craigie*, 294 Mich 545, 548-549; 293 NW 754 (1940); *Civic Ass'n of Hammond Lakes v Hammond Lakes Estates No 3 Lots 126-135*, 271 Mich App 130, 136-138; __ NW2d __ (2006).

Conversely, "where there is no reverter clause [in a deed], a statement of use is merely a declaration of the purpose of conveyance, without effect to limit the grant." *Quinn, supra* at 151.[1] In *Briggs v Grand Rapids*, 261 Mich 11, 12; 245 NW 555 (1932), our Supreme Court examined the effect the language, "This purchase of land is for park purposes," had on a conveyance to a city. Citing *Quinn* for the foregoing proposition, the Court reasoned as follows:

> There appears to be no intention in the language of the deed to limit the grantee in any way.
>
> The phraseology, "This purchase of land is for park purposes," is not nearly as strong as the words "to be used for railroad purposes only," construed in *Quinn* . . . not to constitute an express covenant that the property may not be used for other purposes. The city has the power . . . to sell a park . . . . The owners of property in the vicinity of a park have no vested interests in its continued

[1] The *Quinn* Court found that the warranty deed language, "to be used for railroad purposes only," was not "a covenant of use." *Quinn, supra* at 153.

maintenance when the city acting under proper authorization decides otherwise. [*Id.* at 14.]

We also note our Supreme Court's ruling in *Mason Co Civic Research Council v Mason Co*, 343 Mich 313, 320-321; 72 NW2d 292 (1955), in which it invoked *Briggs* to conclude that language in a conveyance, "to be used for a public park and for no other purpose," did not limit the capacity of a municipality to convey the parcel to the county for use as an infirmary site.

Here, in light of the case law and the relevant language in the quitclaim deeds, we find plaintiffs' arguments unpersuasive. The disputed language is not styled as a covenant. Cf. *Mable Cleary Trust*, *supra* at 492. Rather, as in *Quinn*, *Briggs*, and *Mason*, it serves to declare the purpose for which the property was conveyed. Indeed, the "ingress and egress" language was expressly declared to describe the "purposes of" the conveyance. We construe it accordingly. The deed language does not evince an agreement between the parties regarding future use of the riparian parcel. Cf. *Moore v Kimball*, 291 Mich 455, 457; 289 NW 213 (1939); *Hammond Lakes*, *supra* at 132-134. It is simply not a restrictive covenant. Particularly given that restrictive covenants are strictly construed against those seeking to enforce them, *O'Connor*, *supra* at 341, we read the language in these deeds as "merely a declaration of the purpose of conveyance, without effect to limit the grant." *Quinn*, *supra* at 151. "Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted." *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003).

Because we conclude that the deed language is unambiguous, further inquiry into the issue of intent through examination of extrinsic evidence was not necessary nor proper. The quitclaim deeds conveyed fees without restricting use of Nelson Road to merely ingress and egress to Lake Margrethe. While our analysis is different and contrary to that of the circuit court, the court ultimately reached a result consistent with our outcome and ruling, and we shall not disturb a court's decision if the correct result was reached for the wrong reason. *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 313; 696 NW2d 49 (2005).[2]

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Michael R. Smolenski

[2] Plaintiffs do not challenge any rulings regarding their trespass and nuisance claims, and thus those rulings stand.